



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105-3901

OFFICE OF THE
REGIONAL ADMINISTRATOR

JAN 25 2000

Mr. James Stubchaer
Chairman
State Water Resources Control Board
Bonderson Building
901 P Street
Sacramento, CA 95814

Dear Chairman Stubchaer:

We are writing to express some concerns about the State Water Resources Control Board's recently-adopted Decision 1641. As you know, the U.S. Environmental Protection Agency is not a party to the formal hearings. We are providing our comments to you in our oversight capacity under the Federal Clean Water Act and also as a signatory agency to the 1994 Bay Delta Accord.

We commend the Board for its extraordinary effort over the past several years to develop the comprehensive set of decisions contained in D-1641. Our concerns are brief, and involve the Board's actions as to the San Joaquin River Agreement (SJRA) and related implementation of the San Joaquin flow objectives.

The Bay Delta Accord provided for a set of San Joaquin flow objectives and export limitations to provide protection for fisheries, especially salmonids, on the San Joaquin. These Accord provisions were incorporated essentially intact in the Board's 1995 Water Quality Control Plan (WQCP), which EPA approved as meeting the requirements of the federal Clean Water Act.

In developing a water rights decision to implement the 1995 WQCP, the Board encouraged interested parties to develop basin or segment specific agreements for Board review. In general, EPA supports this innovative, stakeholder-based approach to implementation. In response to the Board's initiative, a substantial effort was made by water agencies, regulatory agencies and nonprofit organizations to develop the Vernalis Adaptive Management Plan (VAMP) as an implementation program for the lower San Joaquin River objectives. Although the particular flow and export targets contained in the VAMP are not identical to those contained in the 1995 WQCP, EPA supports the VAMP as a protective experiment that will provide important information about fishery protection while at the same time providing approximately the same level of protection to the resources as was intended in the 1995 WQCP.

The final San Joaquin River Agreement submitted to the Board deviated from the VAMP proposal in some significant ways, most notably in the lesser protection provided in critically dry flow periods. EPA does not believe that there is a biological justification for this reduced protection, and for that reason believes that the SJRA alone cannot be relied upon as the sole implementation mechanism for the 1995 WQCP.

EPA understands that the Board's decision encourages the Bureau of Reclamation to voluntarily supplement SJRA flows up to the VAMP level. Given the particular context of these 1995 WQCP objectives in the broader framework of Bay/Delta water quality issues, EPA believes that it is inappropriate to rely solely on voluntary approaches to implementation. As a result, appropriate action by the Board is necessary to ensure that any experiments provide a level of protection equivalent to the 1995 WQCP. Such action is necessary not only to implement the 1995 WQCP adequately, but also to put in place criteria that are consistent with the Clean Water Act and will provide clarity and predictability to water rights-holders about how the Board will assess any future proposals for implementation experiments.

We look forward to working closely with you to address these important issues. Please feel free to contact me or refer staff for any follow-up questions to Bruce Herbold at (415) 744-1992.

Yours,

A handwritten signature in cursive script, reading "Felicia Marcus".

Felicia Marcus
Regional Administrator